Court of Appeals, State of Michigan

ORDER

Dianne L Haas v William H Hatz

Docket No. 279648

LC No. 2006-723015-DO

Brian K. Zahra
Presiding Judge

Mark J. Cavanagh

Patrick M Meter
Judges

The Court orders that the November 13, 2008 opinion is hereby AMENDED. The opinion contained the following clerical error: this case was incorrectly designated as Published rather than Unpublished. The Clerk's Office is directed to correct the docket entry to mark the opinion as Unpublished. A copy of this order shall be affixed to the unpublished per curiam opinion for future reference.

In all other respects, the November 13, 2008 opinion remains unchanged.

COURT OF APPEALS OF THE STATE OF MICHIGAN
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Date

Sandra Schultz Mengel
Chief Clerk

STATE OF MICHIGAN

COURT OF APPEALS

DIANNE L. HAAS,

Plaintiff-Appellee,

v

WILLIAM H. HATZ,

Defendant-Appellant.

PUBLISHED
November 13, 2008
9:05 a.m.

No. 279648
Oakland Circuit Court
LC No. 2006-723015-DO

Before: Zahra, P.J., and Cavanagh and Meter, JJ.

PER CURIAM.

In this divorce action, defendant appeals as of right from the trial court's order granting summary disposition to plaintiff and indicating that there was no genuine issue of material fact because the prenuptial agreement was unambiguous in requiring that the proceeds of the marital home be divided evenly. We affirm.

Before marrying, plaintiff and defendant purchased a vacant lot in Novi, where they planned to construct a new home. The parties entered into a prenuptial agreement on May 14, 1993. Article III of the prenuptial agreement governed distribution of marital property in the case of divorce. While the agreement stated that the properties of the parties were to be free and clear of any claims the other party might ordinarily have in the case of divorce, the agreement specifically excepted the Novi home that the parties intended to build together. The agreement specified that, in the event of divorce, the home was to be sold and the proceeds were to be distributed in the following order: to commercial lenders, for mechanics liens/real estate taxes, for mortgage liens in favor of plaintiff or defendant, and 50/50 between plaintiff and defendant. Another provision required that either "party shall, upon the request of the other, execute, acknowledge, and deliver any additional instruments that may be reasonably required to carry the intention of th[e] Agreement into effect . . . ." The agreement also included an integration clause.

Plaintiff spent $80,000 in helping procure the lot for the marital home. Defendant, however, spent more than $2,100,000 on the marital home. Neither party ever requested that a mortgage lien be created in his or her favor before the divorce action was initiated. Plaintiff filed for divorce on July 12, 2006. The parties attempted mediation unsuccessfully on April 12, 2007. Defendant presented a mortgage lien in his favor for plaintiff to sign during mediation. Plaintiff refused to sign the mortgage lien at mediation, and the lien has never been executed or recorded.

Defendant argued below that a genuine issue of material fact existed in that nothing in the contract stated when or how a party would be entitled to a mortgage lien on the Novi home and nothing stated what the cutoff date would be for the creation of a lien. Defendant also urged the trial court to impose an equitable mortgage. The trial court found that defendant had failed to show that there existed a genuine issue of material fact and granted plaintiff's motion for summary disposition. The judgment of divorce ordered that the proceeds of the home sale be divided evenly after satisfying the normal costs of sale.

An appellate "[c]ourt reviews de novo a trial court's grant or denial of a motion for summary disposition." *Latham v Barton Malow Co*, 480 Mich 105, 111; 746 NW2d 868 (2008).

Although the attorney who drafted the prenuptial agreement urged the parties by letter to enter into mortgages based on their contributions toward the home, the parties never did so. Moreover, the correspondence of the drafting attorney is barred by the parol evidence rule because the prenuptial agreement contained a merger clause. See *Romska v Opper*, 234 Mich App 512, 516; 594 NW2d 853 (1999). The plain language of the contract did not require either party to enter into a mortgage for the other party simply because that party contributed toward the marital home. Defendant argues that the provision of the contract requiring execution of documents needed to carry out the intention of the contract created a duty for plaintiff to sign a mortgage lien. We reject this argument because nowhere in the prenuptial agreement is there an intention expressed to keep separate the funds spent on the marital home.

Defendant's claim based on an equitable mortgage is likewise without merit. Defendant's claim is unlike the typical claim of equitable mortgage. "Most equitable mortgage cases appear to involve treating what on its face is an absolute conveyance as a mortgage." *Townsend v Chase Manhattan Mortg Corp*, 254 Mich App 133, 138; 657 NW2d 741 (2002). The present case does not involve a vendor-vendee situation (a conveyance), but rather a vendee-vendee situation (a joint contract). Nothing in the record established that plaintiff was simply intended to be a creditor, as opposed to a joint owner, of the property. Cf., *Burns v Stevens*, 236 Mich 447, 452-453; 210 NW 483 (1926).

Affirmed.

/s/ Brian K. Zahra
/s/ Mark J. Cavanagh
/s/ Patrick M. Meter